



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

Matter of:     DWS, Inc.  
File:            B-229963  
Date:            March 17, 1988

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### **DIGEST**

1. Award of contract to higher-cost, technically superior offeror is not objectionable where award on that basis is consistent with the solicitation's evaluation criteria and the agency reasonably determined that the difference in technical merit outweighed the cost difference.
2. Where request for proposals specifically states that technical considerations are more important than cost, protest that the award should have been based on cost is untimely when filed after the closing date for the receipt of proposals.

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### **DECISION**

DWS, Inc., protests the award of a contract to Ford Aerospace and Communications Systems for maintenance and operation services at Holloman Air Force Base under Department of the Air Force request for proposals (RFP) No. F29651-87-R-0013. DWS asserts that the award to Ford, at a price higher than that proposed by DWS, is not justified given that DWS submitted a fully acceptable technical proposal.

We deny the protest in part and we dismiss it in part.

The RFP was issued on June 10, 1987, and, as amended, requested offers by September 16. Offerors were required to submit technical, management and cost proposals for a 9-month base period and two 1-year option periods. The evaluation factors for award were, in descending order of importance: technical factors; management considerations; and cost. The contract was to be awarded to the offeror whose proposal was determined to be the most advantageous to

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the government, and the RFP specifically reserved to the Air Force the right to award the contract to other than the lowest-priced offeror.

The Air Force received offers, evaluated them, held discussions, and requested best and final offers (BAFOs) from 10 offerors. Ford's second-low cost proposal of \$1,592,123.90 was ranked first in the technical and management areas. DWS, which submitted the lowest cost proposal, in the amount of \$1,400,328, was ranked ninth in the technical and management areas. The evaluation panel then determined that the technical superiority of Ford's proposal was worth the additional cost; found that the price proposed by Ford was fair and reasonable; and, on December 28, awarded the contract to Ford.

On January 7, 1988, DWS protested to our Office that it was entitled to the contract award because it submitted the lowest-priced technically acceptable offer.<sup>1/</sup> In its comments on the Air Force report in response to that protest, DWS also challenges the Air Force's finding that Ford submitted a superior management proposal. Specifically, DWS asserts that the contract is not highly technical and the only personnel required to have a high level of competence are three Range Control Officers (RCOs). DWS alleges that it proposed an RCO with superior qualifications, and while Ford could have proposed an equally qualified RCO, Ford could not have proposed a more qualified RCO. DWS therefore believes that its management proposal should have been rated at least as highly as was Ford's.

In a negotiated procurement, there is no requirement that the award be made on the basis of the lowest cost, unless the solicitation so specifies. Rather, the contracting agency has discretion to select a higher-cost, higher-rated technical proposal if doing so reasonably is deemed worth the extra cost to the government. Dalfi, Inc., B-224248, Jan. 7, 1987, 87-1 CPD ¶ 24. Therefore, where the

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<sup>1/</sup> DWS, a small business, also argued that the Air Force could not deny the firm the contract without submitting the matter to the Small Business Administration for review. In addition, DWS asserted that because it is operating under Chapter 11 bankruptcy protection, it could not be denied the contract award. In its report, the Air Force specifically disputed these allegations, and DWS, in commenting on the report, has not attempted to rebut the Air Force's position. We therefore consider these issues abandoned and we will not consider them on the merits. See Spectrum Analysis and Frequency Engineering, Inc., B-222554, Aug. 1, 1986, 86-2 CPD ¶ 136.

solicitation indicates that technical considerations are more important to the procuring agency than cost considerations, we have upheld award to a firm submitting a superior technical proposal even though its proposed price was not low. Id.

Here, the RFP clearly provided that technical and management considerations were more important than cost and that the award might be made to other than the low-cost offeror. Accordingly, DWS is wrong in its view that it is entitled to the contract award solely because it submitted the low offer. See T. W. Hollopeter & Associates, B-227804, July 30, 1987, 87-2 CPD ¶ 118.

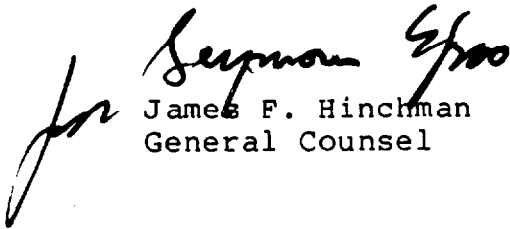
To the extent DWS asserts that the contract award to Ford at a price higher than DWS is not justified, we will not object to an agency's judgment that the technical merit of a superior proposal is worth the added cost in relation to a lower-rated offer unless the judgment is shown to be unreasonable. See Dalfi, Inc., B-224248, *supra*. In this regard, since the evaluation of technical proposals is inherently a subjective process, in reviewing protests of allegedly improper evaluations our Office will not substitute its judgment for that of the agency evaluators. Instead, we will examine the record to determine whether the evaluators' judgments were reasonable and in accordance with the listed criteria and whether there were any violations of procurement statutes and regulations. The protester bears the burden of proving that the agency's evaluation was unreasonable, and this burden is not met by the protester's mere disagreement with the evaluation or its good faith belief that its own proposal should have achieved a higher rating. Sigma Systems, Inc., B-225373, Feb. 24, 1987, 87-1 CPD ¶ 205.

DWS' only dispute concerning the proposal evaluation is that its management proposal should have been rated as highly as Ford's because DWS offered a highly qualified RCO. This fact, however, does not persuade us that the Air Force unreasonably decided that Ford's proposal was superior. The RFP lists management as the second most important evaluation criteria, with the following subcriteria: organizational management, phase in plan, personnel qualifications, and organizational experience and past performance. According to the descriptions of the subcriteria, the proposed RCO only would be rated under personnel qualifications. Thus, even if DWS proposed a superior RCO we cannot conclude that DWS would have received a superior rating in the management area overall. In addition, we note that DWS refers to the allegedly superior qualifications of only one RCO, whereas contract performance would require three RCOs.

As stated above, Ford was ranked first, and DWS ninth, under the technical and management factors. There simply is no basis in this record for our Office to question the Air Force's determinations that Ford submitted a superior proposal, and that such superiority justified award to that firm.

Finally, to the extent DWS is arguing that price should have been the most important evaluation factor,<sup>2/</sup> under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), a protest based upon an impropriety apparent from the face of the solicitation must be filed before the closing date for the receipt of proposals. Since the solicitation clearly provided that cost would be given the least weight, DWS' protest on this issue, filed well after the September 16, 1987, closing date for the receipt of proposals, is untimely. E. H. Pechan & Associates, Inc., B-225648, Feb. 17, 1987, 87-1 CPD ¶ 176.

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel

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<sup>2/</sup> As initially issued, the RFP indicated that the lowest-priced offer would win the competition. Before proposals were due, however, the Air Force amended the RFP to set out the evaluation criteria and scheme discussed above.